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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LISANDRO REYES, Defendant and Appellant.	B269741 (Los Angeles County Super. Ct. No. BA425003)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edmund Wilcox Clarke, Jr., Judge. Conditionally reversed with directions.

Julie Jakubik, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Lisandro Reyes was accused of committing second degree robbery and assault with a deadly weapon when he was 17 years old. He was tried and convicted in adult criminal court and sentenced to serve 28 years to life in state prison.

After Reyes's conviction, but while this case was on appeal, the voters passed Proposition 57, which changed the standards by which courts determine whether minors will be tried in juvenile or adult court. We conclude that Proposition 57 applies retroactively, and thus we conditionally reverse and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Juvenile Court Proceeding

On November 5, 2013, Gustavo Alvarez was shot in his upper right arm and his right leg. Several days later, police arrested 17-year-old Lisandro Reyes in connection with the shooting. A Welfare and Institutions Code section 602 petition was filed, alleging that Reyes had committed a single count of attempted murder.

A. Hearing

On May 21, 2014, the juvenile court held a Welfare and Institutions Code section 707 hearing to determine whether Reyes was a "fit and proper subject to be dealt with under the juvenile court law." At the time of the hearing, section 707 required the juvenile court to decide whether Reyes was properly tried in juvenile court by considering five factors: (1) Reyes's criminal sophistication; (2) whether Reyes could be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) Reyes's previous delinquent history; (4) the success of previous

rehabilitation attempts; and (5) the circumstances and gravity of the offenses alleged in the petition. (Former Welf. & Inst. Code, § 707, subd. (c).)[1]

Officer Derrick Boykins testified at the hearing that on November 5, 2013, he received a report that shots had been fired. He and his partner discovered Alvarez lying in the doorway of Trojan Cleaners, located at 1130 West Martin Luther King Boulevard. Alvarez had been shot in his upper right arm and his right leg.

Alvarez was taken to a hospital, where he told Officer Boykins that earlier that day, he had arranged to meet Reyes, whom he knew as "Suspect." Alvarez and Reyes knew each other from Camp Mendenhall, a detention facility for delinquent minors. Alvarez said he and Reyes had agreed to meet that afternoon at a McDonald's to commit "licks" (robberies) together. They had agreed that Alvarez would bring a firearm with him.

When Alvarez arrived at the McDonald's, he saw Reyes talking to another man. Alvarez and Reyes walked to a nearby alley, and Reyes asked to see Alvarez's firearm. As soon as Alvarez handed the gun to Reyes, Reyes pointed the gun at Alvarez and said he had 13 seconds to run. Alvarez initially thought Reyes was joking, and then "kind of froze when he saw the firearm pointed at him." Reyes counted to six and then fired one round, striking Alvarez in the upper right arm. As Alvarez

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[1] In this section of our opinion we shall refer to both former and current Welfare and Institutions Code section 707 as "section 707." The former section will be designated as such. All subsequent undesignated statutory references are to the Welfare and Institutions Code.

turned to run, Reyes shot him a second time in the right leg. Alvarez ran through the alley and collapsed.

After the shooting, a search was conducted of Reyes's home. Officers recovered a gun that matched the description of the firearm Alvarez had reported carrying the day he was shot.

Reyes was arrested. According to Officer Boykins, Reyes said Alvarez "was an easy mark, street vernacular for easy target. [Reyes] knew [Alvarez] from [Camp Mendenhall] and said it was easy to attempt to make friends with him and betray that friendship to get an easy weapon and get some money." At the time of the shooting, Reyes was high on kush (marijuana). Reyes said he was not aiming at Alvarez and did not intend to kill him.[2]

B. Findings

At the conclusion of the fitness hearing, the juvenile court made the following findings with regard to the section 707 factors:

(1) Criminal sophistication: The court found that "[t]here was some planning to go [do] this [crime]. I'm not quite sure I would use the term sophisticated to describe it, but there was, if you will, a scheme in mind and developed prior to the actual acts, and, therefore, based on that analysis, I would find the minor unfit [to be tried in juvenile court]."

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[2] A transcript of Reyes's recorded statements to law enforcement was introduced at Reyes's criminal trial. Reyes told detectives that when he pointed the gun at Alvarez, Alvarez looked shocked. Reyes said it was his intention to scare Alvarez, not to "get" him, but "then boom, boom, boom. I was high." Reyes said: "I wasn't planning to, I didn't even, probably, like, it wasn't my intention to kill him, like. . . . I wasn't really aiming for like, a head or . . . if I really wanted to, I could've just . . . ."

(2) Potential for rehabilitation: The court found Reyes suitable to be tried in juvenile court with regard to his potential for rehabilitation.

(3) Previous delinquent history: The court found that Reyes's previous delinquent history was "not insignificant, but it's not . . . in this court's mind so egregious that [Reyes] couldn't be found fit [to be tried in juvenile court] under that criteria."

(4) Success of previous attempts to rehabilitate: The court noted that it did not have the entire juvenile court file, but the probation department's synopsis "suggests that there was a graduated form of engagement with the minor. We don't go straight to DJJ [Department of Juvenile Justice] or straight to camp. . . . Although I can't speak for the sentencing court on the underlying offenses, the courts generally take this graduated approach where we try to engage the minor in some behavior modification. But on balance, the court would find that he is not fit on criteria four."

(5) Circumstances and gravity of the alleged offense: "The court finds that [the shooting] was, you know, not necessarily very sophisticated, but it is brutal. I can't find in my mind, other than actually killing this man or rendering him an invalid, it is certainly the most serious kind of offense that the court handles, and, therefore, the court would find that the minor is unfit on that criteria."

Based on its findings, the juvenile court found Reyes not suitable to be tried under the juvenile court law, and it permitted the district attorney to file an adult criminal case against Reyes.

II.
Criminal Trial and Conviction

On July 23, 2014, the district attorney filed a three count information against Reyes alleging attempted murder (Pen. Code, §§ 664, 187(a); count 1), second degree robbery (*id.*, § 211; count 2), and assault with a firearm (*id.*, § 245, subd. (a)(2); count 3). The information further alleged as to all counts that Reyes personally inflicted great bodily injury on Alvarez (*id.*, § 12022.7, subd. (a)), and personally used a firearm (*id.*, §§ 12022.5, 1192.7, subd. (c), 667.5, subd. (c)); and as to counts 1 and 2 that Reyes personally and intentionally used and discharged a firearm, causing great bodily injury to Alvarez (*id.*, §12022.53, subds. (b), (c), (d)).

On August 25, 2015, the jury found Reyes not guilty of attempted murder, but guilty of second degree robbery and assault with a semiautomatic firearm. The jury also made true findings as to each of the associated firearm and great bodily injury enhancements.

On January 15, 2016, the court imposed the following sentence. As to count 2 (second degree robbery) the court sentenced Reyes to three years in state prison under Penal Code section 211, plus an indeterminate term of 25 years to life under Penal Code section 12022.53, subdivision (d), for a total term of 28 years to life in state prison. The remaining enhancements attached to count 2 (10 years pursuant to Penal Code section 12022.53, subdivision (b), three years pursuant to Penal Code section 12022.7, subdivision (a), and 20 years pursuant to Penal Code section 12022.53, subdivision (c)) were imposed and stayed. As to count 3 (assault with a firearm), the court sentenced Reyes to the mid-term of three years, plus enhancements of three years

under Penal Code section 12022.7, and four years under Penal Code section 12022.5, to run concurrent to the sentence on count 2.[3]

Reyes timely appealed from the judgment of conviction.

III.
Post-Trial Issues

On November 8, 2016, after Reyes was sentenced and while this appeal was pending, California voters passed Proposition 57, the Public Safety and Rehabilitation Act of 2016. The law became effective the next day. Among other things, Proposition 57 significantly changed the procedure for determining whether a minor is suitable to remain in the juvenile court system for trial and sentencing.

Reyes filed a supplemental brief on appeal, urging that Proposition 57 should apply to him retroactively, and thus that this court should remand this matter to the juvenile court for a new hearing under Proposition 57.[4] At our request, the People filed a response to Reyes's supplemental brief.

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[3] We note a discrepancy between the court's oral pronouncement of sentence and the sentence reflected in the court's January 15, 2016 minute order with respect to count 3. The oral pronouncement as to count 3 states that the mid-term sentence of three years, plus the enhancements associated with count 3, are "concurrent to count two." The minute order, however, states that the count 3 enhancements are stayed, and "[t]he total sentence imposed as to count 3 is 3 years to run concurrent to count 2."

[4] Under Welfare and Institutions Code former section 707, subdivision (a)(1) and (c), the determination to be made was whether the minor was a "fit and proper subject to be dealt with under the juvenile court law." The current section, as amended

CONTENTIONS

Reyes contends that Proposition 57 applies retroactively, and thus that the matter should be remanded to the juvenile court for a new transfer hearing under Proposition 57. In the alternative, Reyes contends that his sentence on count 3 should have been stayed pursuant to Penal Code section 654 because the robbery and assault arose out of the same indivisible course of conduct.

The People urge that Proposition 57 does not apply retroactively and, in any event, the changes effected by Proposition 57 would not have altered the juvenile court's decision to transfer Reyes out of juvenile court. The People further contend that the trial court was not required by Penal Code section 654 to stay the sentence on count 3 because substantial evidence supported the trial court's implicit finding that Reyes had multiple or simultaneous objectives.

DISCUSSION

The question of whether Proposition 57 applies retroactively has produced a split among the Courts of Appeal, and the issue currently is on review before the California Supreme Court.[5] For the reasons that follow, we conclude that

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by Proposition 57, eliminates the "fit and proper" language; instead, the juvenile court is empowered to "decide whether the minor should be transferred to a court of criminal jurisdiction." (Welf. & Inst. Code, § 707, subd. (a)(2).) Given this change, we will use the terms "fitness hearing" and "transfer hearing" interchangeably, as appropriate.

[5] E.g., *People v. Cervantes* (2017) 9 Cal.App.5th 569 [Proposition 57 does not apply to convictions affirmed on appeal, but does apply to convictions reversed and remanded for new

Proposition 57 should be applied retroactively, and thus we conditionally reverse and remand for a juvenile court hearing under current law. In light of our conclusion as to Proposition 57, and because the issue was not expressly addressed below, we do not reach the Penal Code section 654 issue.

I.

Welfare and Institutions Code Section 707

A. Former Law

Reyes's fitness hearing was conducted in May 2014 under the then-current version of Welfare and Institutions Code section 707. As it was then written, section 707 provided that if a minor 14 years of age or older was alleged to have committed a felony specifically enumerated in subdivision (b) (including robbery, attempted murder, and assault with a firearm) and was alleged to have personally used a firearm during the commission or attempted commission of the felony, the district attorney had discretion to file a juvenile court petition *or* to directly file charges against the minor in adult criminal court. (Former § 707,

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trial], review granted May 17, 2017, S241323; *People v. Superior Court (Lara)* (2017) 9 Cal.App.5th 753 [where minor had not yet been tried in adult court, transfer to juvenile court for section 707 hearing was proper], review granted May 17, 2017, S241231; *People v. Mendoza* (2017) 10 Cal.App.5th 327 [no retroactive application of Proposition 57], review granted July 12, 2017, S241647; *People v. Vela* (2017) 11 Cal.App.5th 68 [Proposition 57 applies retroactively], review granted July 12, 2017, S242298; *People v. Marquez* (2017) 11 Cal.App.5th 816 [no retroactive application of Proposition 57], review granted July 26, 2017, S242660; *People v. Canon* (Apr. 21, 2017, A133342) [nonpub. opn.] [no retroactive application of Proposition 57], review granted July 26, 2017, S242185.

subds. (b)(3), (b)(12), (b)(13), (c), (d); *People v. Villa* (2009) 178 Cal.App.4th 443, 446.)

If a petition was filed in juvenile court and the district attorney made a motion to transfer the matter to adult criminal court, the juvenile court was required under section 707, subdivision (c), to determine whether the minor was "a fit and proper subject to be dealt with under the juvenile court law." (Former § 707, subd. (c).) In making that determination with respect to specified serious offenses, "the minor shall be presumed to be *not* a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of" five statutory criteria—i.e., the minor's (1) criminal sophistication, (2) potential for rehabilitation, (3) previous delinquent history, (4) success of previous attempts to rehabilitate, and (5) circumstances and gravity of the alleged offense. (Former § 707, subd. (c), italics added.) A determination that the minor was "a fit and proper subject to be dealt with under the juvenile court law" required a finding by the court that the minor was "fit and proper *under each and every one of the above criteria*." (Former § 707, subd. (c), italics added.)

Section 707 was amended effective January 1, 2016 to provide additional guidance concerning the five statutory criteria, as follows:

"In making its [transfer] decision, the court shall consider the criteria specified in subparagraphs (A) to (E). . . .

"(A)(i) The degree of criminal sophistication exhibited by the minor. [¶] (ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

"(B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. [¶] (ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

"(C)(i) The minor's previous delinquent history. [¶] (ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

"(D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor. [¶] (ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

"(E)(i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. [¶]

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development." (§ 707, subd. (a)(2).)

B. Proposition 57

On November 8, 2016, the voters enacted Proposition 57, which made significant changes to section 707. (Prop. 57, § 1.) Among other things, Proposition 57 eliminated prosecutorial discretion to directly file a case against a minor in adult criminal court: Under the amended law, all minors must have a hearing in juvenile court before being transferred to adult criminal court. (§ 707, subd. (a)(1).) Further, Proposition 57 eliminated the presumption that minors accused of committing serious felonies are not suitable to be tried in the juvenile court, as well as the requirement that a minor satisfy "*each and every one* of the [statutory] criteria" to be tried in juvenile court. Instead, section 707, subdivision (a)(2) now provides that "the juvenile court shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E)."

II.
Proposition 57 Applies Retroactively

Had Reyes committed his offenses after Proposition 57 went into effect, he would have been entitled to a transfer hearing under the new law. The question before us is whether Proposition 57 applies to juvenile offenders tried and convicted

before the Act's effective date, but whose cases are not yet final on appeal.

Whether the voters intended Proposition 57 to apply retroactively is a question of law to which we apply our independent judgment. " ' "In interpreting a voter initiative" ' . . . ' "we apply the same principles that govern statutory construction. [Citation.] Thus, [1] 'we turn first to the language of the statute, giving the words their ordinary meaning.' [Citation.] [2] The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]. [Citation.] [3] When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' " ' (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900–901.) 'In other words, our "task is simply to interpret and apply the initiative's language so as to effectuate the electorate's intent." ' (*Id.* at p. 901.)" (*People v. Arroyo* (2016) 62 Cal.4th 589, 593.)

A. Presumptions Regarding Retroactivity

"It is well settled that a new statute is presumed to operate prospectively absent an express declaration of retrospectivity or a clear indication that the electorate, or the Legislature, intended otherwise." (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287 (*Tapia*).) It is undisputed that Proposition 57 does not expressly state whether it applies retroactively to pending cases. Reyes contends, however, that an exception to the presumption of prospectivity, established in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) and its progeny, applies here. For the reasons that follow, we agree.

In *Estrada*, the Legislature reduced the punishment for a crime after the defendant committed the crime but before he was sentenced. (*Estrada*, *supra*, 63 Cal.2d at pp. 743–744.) Although the amending act was silent as to whether the reduced punishment applied to defendants who had been convicted of the crime prior to the amendment, the *Estrada* court held that when a statute that is silent as to its retroactivity reduces the penalty for a "particular crime," "the new lighter penalty" will apply "to acts committed before its passage[,] provided the judgment convicting the defendant of the act is not final." (*Id.* at p. 745.) The Court explained that by reducing a crime's punishment, the Legislature "obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final. This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology." (*Ibid.*)

In *People v. Francis* (1969) 71 Cal.2d 66 (*Francis*), the Supreme Court extended *Estrada's* retroactivity rule to a statutory amendment that "does not revoke one penalty and provide for a lesser one but rather vests in the trial court discretion to impose either the same penalty as under the former law or a lesser penalty." (*Id.* at p. 76.) The *Francis* court rejected

the contention that, where the trial court retains discretion under an amended statute to reimpose the same penalty required by the former statute, there is no "inevitable inference" that the Legislature determined that the former penalty was too severe and thus intended the amendment to apply retroactively. The court explained: "[T]here *is* such an inference because the Legislature has determined that the former penalty provisions may have been too severe in some cases and that the sentencing judge should be given wider latitude in tailoring the sentence to fit the particular circumstances." (*Ibid*., italics added.) The *Francis* court also rejected the argument that *Estrada* should apply only where retroactivity would not require additional proceedings in the trial court, concluding that such additional proceedings would not "impose an insurmountable burden on trial courts" and was not an impediment to applying the *Estrada* rule. (*People v. Francis*, *supra*, at p. 77.)

People v. Benefield (1977) 67 Cal.App.3d 51 (*Benefield*) applied the above-articulated principles in the context of a juvenile court proceeding. In that case, a juvenile defendant had been convicted in adult court of certain crimes and sentenced to prison. (*Id*. at p. 55.) Before the defendant's judgment was final, the Legislature both enacted and amended a statute that provided that a minor could not be sentenced to state prison unless he had been evaluated by the California Youth Authority (CYA) and found by a court, after considering the CYA's recommendations, to be an unsuitable subject for commitment to the CYA. (*Id*. at p. 57.) The Court of Appeal concluded that because under the amended law the minor could be committed to a CYA facility, instead of to prison, the amendments "would operate to benefit, and in effect impose a lighter punishment

upon" the minor. (*Ibid.*) Therefore, the "rationale of *In re Estrada* is reasonably applicable," and the court thus set aside the minor's state prison sentence and ordered compliance with the amended statute. (*Id.* at p. 59.)

B. Proposition 57 Applies Retroactively

Applying the principles articulated in *Estrada*, *Francis*, and *Benefield*, we conclude that Proposition 57 should apply retroactively in the present case. As we have said, when Reyes committed his offenses, a transfer to adult criminal court was governed by the former version of section 707, under which Reyes was "*presumed* to be not a fit and proper subject to be dealt with under the juvenile court law." (Former § 707, subd. (c), italics added.) The juvenile court was required to transfer Reyes to adult criminal court unless it concluded he was "fit and proper" to remain in juvenile court under "*each and every one* of the [five statutory] criteria. (Former § 707, subd. (c), italics added.) Under Proposition 57, in contrast, there is no statutory presumption of unfitness, and the juvenile court may weigh the statutory factors as it deems appropriate. Accordingly, a minor is more likely to be found suitable to remain in juvenile court under the current law than he was under the law that applied at the time Reyes committed his offenses.

The consequences for a minor of being tried in adult criminal court, rather than in juvenile court, are profound. Under the statutory guidelines that governed Reyes's sentencing in adult criminal court, Reyes was sentenced to an indeterminate term of 28 years to life in state prison. In contrast, under the juvenile law, Reyes would have been held in a juvenile facility, and ordinarily could not have been confined beyond his 25th birthday. (Welf. & Inst. Code, §§ 607, subd. (f), 707, subd. (b),

731, subd. (a)(4), 1769, subd. (c), 1771, subd. (b).) Accordingly, Proposition 57 may have the effect of significantly reducing a minor's time in custody.

Further, there are significant differences between the adult and juvenile systems. "The juvenile delinquency system is not primarily concerned with punishing juvenile offenders; rather, it is concerned with rehabilitating them. (*In re J.W.* (2015) 236 Cal.App.4th 663, 667.)" (*S.V. v. Superior Court* (2017) 13 Cal.App.5th 1174, 1180-118.) " 'Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances." (§ 202, subd. (b).) The minor's rehabilitation and the concomitant protection of public safety are important considerations in the juvenile justice system." (*In re J.W.* (2015) 236 Cal.App.4th 663, 667–668.) Thus, the effect of Proposition 57 is to "lessen[] punishment"—or, indeed, to eliminate punishment—to which Reyes may be subject within the meaning of *Estrada*. (See *Estrada*, *supra*, 63 Cal.2d at p. 744.)

The People urge that *Estrada* does not apply to the present case because "no provision of Proposition 57 reduces the penalty for any *particular crime*." (Italics added.) We do not agree. Proposition 57 changes the procedure by which minors accused of committing any of 30 specifically-identified crimes, including attempted murder, burglary, and assault with a firearm, are evaluated for transfer to adult criminal court. (§ 707, subd. (b).) It thus potentially mitigates the consequences with regard to 30 "particular" crimes committed by minors. We can conceive of no

reason why a statutory amendment that reduces the consequences imposed for a *single* specific crime should be applied retroactively, but a statutory amendment that potentially reduces the consequences imposed for *many* specific crimes should not.

The People also contend that *Estrada* does not apply to the present case because there is "no certainty under the new law that a minor will receive a mitigated penalty." Although we agree with the People's factual contention—there can be no dispute that, under Proposition 57, the juvenile court retains discretion to order Reyes transferred to adult criminal court—we do not agree that *Estrada* does not apply in these circumstances. To the contrary, as we have said, in *Francis* the Supreme Court specifically held that *Estrada* applied even though the amendment at issue did *not* "revoke one penalty and provide for a lesser one but rather vests in the trial court discretion to impose either the same penalty as under the former law or a lesser penalty." (*Francis*, *supra*, 71 Cal.2d at p. 76.) Thus, the fact that the application of Proposition 57 in the present case might—but will not necessarily—result in lesser punishment does not preclude application of the *Estrada* rule.

C. Failure to Provide Reyes a Hearing Under the Amended Statute Is Not Harmless Error

The People contend that even if Proposition 57 applies retroactively, denying Reyes a new juvenile court hearing under the amended statute cannot prejudice him because there is no reasonable probability he would have obtained a different outcome had the new version of section 707 been in effect. We do not agree.

Under the law as it existed in 2014, a minor accused of attempted murder could remain in juvenile court only if the court found him suitable under *all five* suitability factors. (See Discussion, § I(A), *ante*.) The juvenile court found that Reyes was suitable to be adjudicated in juvenile court with regard to two suitability factors, and unsuitable under the remaining three suitability factors. Thus, the juvenile court's findings precluded adjudication in the juvenile court. Under current law, in contrast, the juvenile court has discretion to weigh the five factors in any manner it deems appropriate, and thus even if the juvenile court were to adopt its prior findings, it could conclude Reyes should not be transferred to adult criminal court.

Moreover, since Reyes's transfer hearing in 2014, section 707 has been amended to include explanatory material that may alter the juvenile court's evaluation of the relevant factors. For example, section 707, subdivision (a)(2)(A)(ii), now provides that when evaluating criminal sophistication, "the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication." And section 707, subdivision (a)(2)(E)(i) now provides that when evaluating the circumstances and gravity of the alleged offense, the juvenile court "may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm

actually caused by the person, and the person's mental and emotional development."

In the present case, the juvenile court found Reyes unsuitable with regard to the criminal sophistication factor because Reyes had engaged in some prior planning activity: "There was some planning to go [do] this [crime]. I'm not quite sure I would use the term sophisticated to describe it, but there was, if you will, a scheme in mind and developed prior to the actual acts." The court also found Reyes unsuitable with regard to the circumstances and gravity of the offense, noting that the shooting "was . . . not necessarily very sophisticated, but it is brutal."

Under the amended law, the juvenile court may conclude that other factors, such as Reyes's immaturity, impetuosity, or failure to appreciate risks, outweigh the significance of planning activity, and thus may conclude that Reyes is suitable with regard to the criminal sophistication factor. Or, the court may conclude that factors such as Reyes's mental state or mental and emotional development outweigh the brutality of the crime, and thus that Reyes is suitable with regard to the circumstances and gravity of offense factor.[6] Accordingly, we conclude that depriving Reyes of a hearing under the amended statute is not harmless error.

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[6] Of course, the juvenile court may, after considering all relevant factors, reach the same conclusion that Reyes's criminal sophistication weighs against his adjudication in juvenile court.

III.
At This Juncture, We Decline to Decide the Penal Code Section 654 Issue

Having concluded that this matter must be remanded for a transfer hearing, we now briefly address Reyes's alternative contention on appeal that his sentence was imposed in violation of Penal Code section 654.

When a single ground raised by appellant is dispositive of an appeal, whether to address additional alternative grounds is within the discretion of the appellate court, to be exercised in the interests of judicial economy. (See, e.g., *People v. Blackington* (1985) 167 Cal.App.3d 1216, 1219 [addressing appellant's additional contentions "concerning issues which presumably will arise on retrial of the case"; *Apple, Inc. v. Franchise Tax Bd.* (2011) 199 Cal.App.4th 1, 15 [" 'The principal reason for an appellate court to decline to review alternative grounds for a trial court decision is judicial economy. . . .' "]; *Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 85 [same].) For the reasons that follow, we decline to reach the Penal Code section 654 issue at this juncture.

First, if this matter remains in the juvenile court for sentencing after a further transfer hearing, Reyes will be subject to a juvenile court disposition, rather than an adult sentence. In that case, the Penal Code section 654 issue will be moot.

Second, the Penal Code section 654 issue was not explicitly addressed below, and thus we cannot determine with certainty whether the trial court intended to stay the count 3 sentence pursuant to Penal Code section 654. Our Supreme Court has explained that "[t]o facilitate meaningful appellate review, the better practice is for trial courts to state on the record their

reasons for concluding that multiple offenses are or are not separately punishable under section 654." (See *People v. Corpening* (2016) 2 Cal.5th 307, 316, fn. 6.) Although in some circumstances we would presume the court did not intend to stay the sentence on count 3, we decline to reach the issue here because there are further uncertainties about the sentence that was intended. Specifically, the reporter's transcript and minute order reflect different sentences. The reporter's transcript of the January 15, 2016 hearing states that the entire sentence associated with count 3—i.e., the mid-term sentence of three years, plus the four-year and three-year enhancements—is to run "concurrent to count two." The minute order of the same date, however, states that the mid-term of three years is to run concurrent to count 2, and the count 3 enhancements are stayed. Accordingly, we cannot determine with certainty what sentence the trial court intended to impose on count 3. If Reyes is returned to adult criminal court for sentencing, these issues can be addressed there.

For all of these reasons, we decline to decide the Penal Code section 654 issue.

DISPOSITION

The judgment is conditionally reversed and the case is remanded to the juvenile court to hold a transfer hearing in accordance with Welfare and Institutions Code section 707, subdivision (a), as amended by Proposition 57.

If the juvenile court determines on remand that Reyes should not be transferred to adult criminal court, the court shall hold proceedings to determine the proper disposition pursuant to applicable law.

If the juvenile court determines that Reyes should be transferred to adult criminal court pursuant to section 707, the matter shall then be returned to that court for resentencing. At that time, the court shall determine whether the count 3 sentence is to be stayed pursuant to Penal Code section 654 or, alternatively, is to run concurrent to the count 2 sentence, and shall impose sentence accordingly.

Because we have not reached the Penal Code section 654 issue on the merits, neither party shall be precluded from raising Penal Code section 654 error in any subsequent appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J. BACHNER, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.